

PUBLIC LAW BOARD NO. 7660

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT**

and

**UNION PACIFIC RAILROAD COMPANY
[Former Chicago and North Western Transportation Company]**

**Case No: 95
Award No: 95**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. C. Jones, by letter dated January 20, 2017, for alleged violation of General Code of Operating Rules (GCOR) Rule 1.6: Conduct - Dishonest was unjust, arbitrary, unwarranted and in violation of the Agreement (System File J-1719C-401/1681443 CNW).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Jones must be reinstated to service, the charges dismissed and he shall be made whole for all financial losses suffered as a result of the violation, including straight time for his position or position he would have held, holiday paid, lump sum payments, retroactive wage increases, overtime for his position or position he would have held or bid to, health, dental and vision care insurance premiums, deductibles and co-payments and all months of service credited towards railroad retirement as well as vacation restored and credit given."

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Claimant, Casey Jones, has been employed by the Carrier for approximately 14 years and held the position of Track Supervisor at the time of his dismissal. The Carrier alleged that the Claimant violated Rule 1.6(4): Conduct (Dishonest) where on 14 separate occasions he was dishonest when he submitted reports required by the Federal Railroad Administration (“FRA”) that did not correspond to his actual track inspections. The Carrier claims he also submitted false payroll records to receive compensation for time not worked, including overtime, for the period December 6 to December 30, 2016.

A hearing and investigation was conducted on January 11, 2017. On January 20, 2017, the Carrier notified him in writing that he was dismissed from service. The Organization filed its claim on February 16, 2017. The record indicates that the Carrier denied subsequent appeals by the Organization and following a conference on August 24, 2017 upheld its decision to dismiss the Claimant. The Organization rejected the Carrier’s decision and moved to have the matter adjudicated before this Board.

The Organization contends that the Carrier violated Rule 19 when it failed to provide the Claimant with a fair and impartial hearing. It argues that the Carrier refused to allow an advance review of the documentary evidence being submitted into the record or sufficient time for the Organization to review 200 pages of exhibits. The Organization maintains that the hearing officer’s conduct was not impartial and that he interfered in its ability to represent the Claimant effectively. It also objected to the use of the Telematics Global Positioning System (“GPS”) data in a disciplinary investigation.

The Board rejects the Organization’s strenuous argument that the Claimant did not receive a fair and impartial hearing and investigation. The Organization’s claim that the Carrier committed a procedural error when it did not share documents in advance is unsupported by the record. There is no express language in the Agreement that requires the Carrier to provide the Organization with advance documentation. The purpose of the hearing and investigation is for each party to hear and review all relevant evidence that pertains to the dispute.

The Organization was given ample opportunity by the hearing officer to review the

Carrier's evidence during the course of the hearing as well as an offer to postpone the hearing and reconvene in order to provide additional time to review the documents. Given these factors, the hearing officer was not unreasonable or prejudicial when he denied the Organization's request to take possession of the evidence and leave the Carrier's premises with it until the investigation continued on a different date.

There is nothing in the record that prohibits the Carrier from using technological tools like Telematics to track its vehicles. This Board has previously held that without a written agreement or an established past practice that prohibits such data collection, the Carrier has the discretion to use GPS devices to monitor its vehicle use. See Public Law Board No. 7660, Award No. 84.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Upon review of all the evidence adduced during the on-property investigation, the Board here finds that the record contains substantial evidence that the Claimant violated Rule 1.6(4). The Carrier's witness provided credible testimony, along with substantial documentary evidence that confirms the Claimant engaged in dishonest conduct.

There are no grounds to decide that the Carrier was biased toward the Claimant in its assessment of the evidence and testimony. Credibility determinations of witnesses by the Carrier are not to be disturbed absent evidence that its conclusions are arbitrary. It is well established by arbitral precedent that the Board sits in review of the Carrier's findings made on the property and does not make *de novo* findings.


Legions of boards in the industry have found that acts of dishonesty are serious infractions where dismissal has been consistently upheld, irrespective of the previous disciplinary record or length of service. It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. In Award Nos. 75, 87 and 88 decided by this Board we upheld the decision to dismiss those found to have engaged in dishonest conduct. The record does not contain any evidence that the Carrier was biased or

prejudiced in dismissing the Claimant. The Board has no basis to alter the Carrier's decision.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has provided substantial evidence that the Claimant engaged in dishonest conduct when he submitted false FRA reports and payroll records.

AWARD

Claim denied.



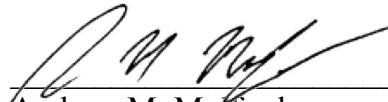
Michael Capone
Neutral Member

Dated: January 17, 2019



Alyssa K. Borden
Carrier Member

Dated: 01/17/2019



Andrew M. Mulford
Labor Member

Dated: 01/17/19